

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STANLEY MARCUS GALYEAN,

Plaintiff,

v.

NORTHWEST TRUSTEE SERVICES
INC., et al.,

Defendants.

CASE NO. C13-1359 MJP

ORDER ON MOTIONS TO DISMISS

The Court, having received and reviewed:

1. Motions to Dismiss filed by Defendants Northwest Trustee Services (“NWTS”), Routh Crabtree Olsen PS (“RCO”), Federal Home Loan Mortgage Corporation (“FHLMC”), IndyMac Mortgage Services, and Mortgage Electronic Registration Systems Inc. (“MERS”) (Dkt. Nos. 77 and 79);

2. Plaintiff's responsive pleadings (i.e., "Motion for Leave to the Court An Amended Complaint Under Rights of a Pro Se Litigant in Answer to NWT's, RCO's, One West Bank, N.A., Federal Home Loan Mortgage Corp., MERS, Inc. and MERSCORP Holdings, Inc. Motion to Dismiss" [Dkt. No. 82]; "Motion for Reconsideration and Memorandum of Law to Support Pleadings in Opposition to Dismiss and Amended Complaints" [Dkt. No. 83]; and "Memorandum of Law to Support Pleadings in Opposition to Dismiss" [Dkt. No. 85];

3. Defendants' reply briefing (Dkt. Nos. 91 and 92)

and all attached declarations and exhibits, including the Amended Complaint (Dkt. No. 67), makes the following ruling:

IT IS ORDERED that Plaintiffs' complaint is DISMISSED in its entirety; further finding that amendment would be futile, the dismissal will be WITH PREJUDICE.

Background

The Court reproduces the factual background contained in its previous Order on Motions to Dismiss:

On December 28, 2007, Plaintiff Stanley Galyean ("Plaintiff") received a \$320,000 loan from lender (and Defendant) IndyMac Bank ("IndyMac") and granted a deed of trust on real property located at 3315 97th Drive SE in Everett, Washington. On January 7, 2008, the Deed of Trust was recorded in Snohomish County.

In July of 2008, IndyMac went into receivership and was taken over by the Federal Deposit Insurance Corporation ("FDIC"). Defendant IndyMac Federal Bank, FSB ("IndyMac Fed") was created as a successor bank.

In October, 2008, Plaintiff sent a letter to IndyMac Fed, stating in essence that (1) he had never consented to a financial relationship with IndyMac Fed and (2) he had sent a \$320,000 promissory note as full payment on his loan. The letter stated that failure to respond would release his loan obligation; IndyMac Fed did not respond to the letter. In December of 2008, Plaintiff ceased making payments on the loan.

On March 13, 2009, Defendant Northwest Trustee Service, Inc. ("NWTs") mailed a notice of default to Plaintiff, which Plaintiff acknowledges receiving (*see* Complaint

¶ 248). On March 16, 2009, Plaintiff sent IndyMac Fed (1) “Notice and Demand for Recipient Copies of J099-OID/1899-INT/1099A to Cover Eligible Issues in Recharging Information, Account/WASE No. 08CR-1234S-A, Notice of Request to Provide Accounting Pursuant WA UCC § 9210” (Dkt. No. 1, Ex. 11); (2) “Request for Debt Validation” (*Id.*, Ex. 12); and (3) “Rescission of Signatures/Waiver of Benefits and Privileges/Dissolution of Adhesion Contracts/Revocation of Power(s) of Attorney as They Relate to Home Eq. Servicing Mortgage, Loan Account No. 1010865001” (*Id.*, Ex. 13).

On April 6, 2009, Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”), acting as a nominee for Defendant IndyMac, executed an Assignment of Deed of Trust to Defendant IndyMac Fed; that assignment was recorded in Snohomish County on April 20, 2009, the same day that IndyMac Fed appointed Northwest Trustee Services, Inc. (“NWTs”) as successor trustee under the Deed of Trust. Plaintiff’s complaint indicates his knowledge of the assignment and the recording of that document. (Complaint, ¶¶ 251-252.)

Four days later, NWTs mailed a Notice of Trustee’s Sale to Plaintiff and posted the notice at the property in question. On April 27, 2009, NWTs recorded a Notice of Trustee’s Sale. The sale was originally set for July 31, 2009, but was postponed to October 2, 2009. Plaintiff made no attempt to enjoin or restrain the sale and the property was sold to Defendant Federal Home Loan Mortgage Corporation (“FHLMC”). NWTs executed a Trustee’s Deed to FHLMC and the Trustee’s Deed was recorded on October 8, 2010.

On August 1, 2013, Plaintiff filed the instant lawsuit.

(Dkt. No. 65, pp. 2-4.)

In the above-cited order, the Court granted Defendants’ FRCP 12(b)(6) motions, dismissing many of Plaintiffs’ causes of action with prejudice, but permitting the filing of an amended complaint to address certain deficiencies in certain claims where the Court found that amendment would not be futile. (*Id.*, pp. 20-21.) Plaintiff filed a 75-page amended complaint (Dkt. No. 67: “AmCompl”) – the amended complaint contained some revised claims, some new claims and several causes of action which had previously been dismissed with prejudice. In response, Defendants filed the renewed motions to dismiss which are presently before the Court.

Discussion

Dismissal of Plaintiff Global Trust #2

In the previous Order on Motions to Dismiss, the Court pointed out that Plaintiff Global Trust #2, as an “artificial entity,” must be represented by someone licensed to practice law before the federal court, and that no one had filed such an appearance on its behalf. (Dkt. No. 65, p. 5.) To date, no one has still filed an appearance on behalf of Global Trust #2 and Plaintiff Galyean has neither addressed this procedural deficiency nor provided an explanation for his Co-Plaintiff’s unrepresented status or non-appearance.

Therefore, Plaintiff Global Trust #2 will be dismissed from this lawsuit for failure to appear and any claims dependent upon it will be dismissed as well. For the remainder of this order, any reference to “Plaintiff” will solely concern *pro se* party Stanley Galyean.

FRCP 41(b) motion

Defendants NWTs and RCO have made a preliminary request for dismissal under FRCP 41(b) for failure to comply with an order of the court, based on Plaintiff’s having essentially re-filed several causes of action which were dismissed with prejudice in the previous order. The Court declines this request – the federal courts favor resolution on the merits and this order will proceed to review the merits of Defendants’ motion to dismiss and adjudicate Plaintiff’s lawsuit on that basis.

Previously dismissed claims

By way of review, the Court reproduces here the “Conclusion” section of the original Order on Motions to Dismiss which contains a summary of the dismissals previously entered:

To summarize, and for ease of access when determining what claims may still be brought by way of an amended complaint, here are the Court's rulings, count by count:

- | | |
|-----------------|--|
| Count 1 | Declaratory Relief
<u>Dismissed with prejudice</u> (all parties) |
| Count 2 | Quiet Title Claims
<u>Dismissed with prejudice</u> (as to NWTS and RCO); <u>dismissed with leave to amend</u> (as to MERS and FHLMC) |
| Count 3 | Slander of Title
<u>Dismissed with prejudice</u> (all parties) |
| Count 4 | Washington Consumer Protection Act
<u>Dismissed with prejudice</u> (all parties) |
| Count 5 | Contract Causes of Action and Claims
<u>Dismissed with leave to amend</u> (as to Plaintiff Global Trust #2 – if properly represented -- and Plaintiff Galyean) |
| Count 6 | Declaratory Relief and Order in Favor of Plaintiffs for Breach of International Commercial Claim within Admiralty
<u>Dismissed, with prejudice</u> (all parties) |
| Count 7 | Fair Debt Collection Practices Act Violations
<u>Dismissed with prejudice</u> (all parties) |
| Count 8 | Breach of Contract and Theft against IMF/FMB, NWTS, RCO, FreddieMac
<u>Dismissed with prejudice</u> (all parties) |
| Count 9 | “Fair Debt Reporting Act” (Fair Credit Reporting Act)
<u>Dismissed, with leave to amend</u> (all parties except MERS, NWTS and RCO) |
| Count 10 | Real Estate Settlement Procedures Act
<u>Dismissed with prejudice</u> (all parties) |
| Count 11 | U.S. Postal Service Mail Fraud
<u>Dismissed with prejudice</u> (all parties) |
| XXXXX | Deed of Trust Act
<u>Dismissed with prejudice</u> (all parties) |

Dkt. No. 65, pp. 20-21.

Of the claims which were dismissed, with prejudice, against all parties, Plaintiff has essentially re-filed (in some form or other) the following: his theft claim (AmComplt, ¶¶ 15.1-

1 15.4), a request for declaratory judgment (AmComplt, ¶¶ 21.1-21.9), and his Deed of Trust Act
2 and Consumer Protection Act claims.¹

3 The Court reiterates that those claims have been dismissed with prejudice, remain
4 dismissed with prejudice, and Plaintiff may not pursue them any further in this litigation.

5
6 Previously plead claims

7 Contract claims

8 In his original complaint, Plaintiff had asserted that certain parties to the contract (the
9 Deed of Trust) “lacked contractual capacity” (Dkt. No. 4, Complaint, ¶ 331) and that “the note
10 and Deed of Trust were contracts of adhesion and procedurally and/or substantively
11 unconscionable.” (*Id.*) The Court found those impermissibly vague and permitted him an
12 opportunity to amend these allegations to include factual and legal support for his assertions.
13 Additionally, the original contract sued Defendant NWTs for breaches of contract on the Deed
14 of Trust, a contract to which NWTs was not a party. (Complaint, ¶¶332-335.)

15 Plaintiff has failed to address any of these deficiencies in his amended complaint.
16 (AmComplt, ¶¶ 8.1-8.20.) There continues to be a complete lack of factual allegations to support
17 his claims of lack of capacity or illegality of contract. Plaintiff alleges “unconscionability” on
18 the grounds that the deed created a cloud on the title to the property (AmComplt, ¶ 8.4), but as
19 Defendants point out, the purpose of a Deed of Trust is to create a cloud on the title. Plaintiff
20 appears to argue that the transfer of the loan somehow invalidated the contract, but in fact the
21 deed itself made it clear that the loan could be sold (as evidenced in the document, which
22 Plaintiff attached to his complaint). (Dkt. No. 4, Ex. 2, p. 2.)

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24 ¹ The latter two (Deed of Trust Act and Consumer Protection Act) appear as necessary elements of other
parts of Plaintiff’s newly-filed claims and will be addressed in the section on “Newly-filed claims.”

1 Finally, and most fatally to Plaintiff's contract claims, his own failure to perform his
 2 obligations under the contract (i.e., his admitted failure to make his mortgage payments)
 3 effectively neutralizes his ability to complain about any other party's nonperformance. As this
 4 Court has noted previously, "[i]t is black letter contract law in Washington that

5 [i]f a contract requires performance by both parties, the party claiming
 6 nonperformance of the other must establish as a matter of fact the party's own
 7 performance. [*citation omitted.*] Thus, the first issue to resolve is whether
 8 plaintiffs sufficiently performed under the agreement to claim nonperformance of
 defendants.

9 Willener v. Sweeting, 107 Wn.2d 388, 394 (1986)." (Dkt. No. 65, p. 15.) It is beyond dispute
 10 that plaintiff has not performed under the agreement, therefore he will not be heard to complain
 11 against any alleged nonperformance by any of the defendants. His contract causes of action will
 12 be dismissed with prejudice.

13 *Fair Credit Reporting Act ("Fair Debt Reporting Act")*

14 In the previous Order on Motions to Dismiss, the Court permitted to Plaintiff the
 15 opportunity to amend his claims regarding the Fair Credit Reporting Act ("FCRA," which he
 16 continues to insist on labeling the "*Fair Debt Reporting Act*") for two reasons: (1) to permit him
 17 to include specific factual allegations regarding when the allegedly false credit information was
 18 reported and (2) to permit him to amend his pleadings to specify which of the Defendants he was
 19 alleging had reported the false information. (Dkt. No. 65, p. 9.)

20 Plaintiff's amended complaint failed to address either of these concerns in a meaningful
 21 manner. His amended complaint alleges that Defendants NWTs, RCO and One West Bank
 22 "notif[ied] the different credit recording agencies... providing inaccurate negative credit
 23 information on Plaintiffs that will be verified and proven through discovery." (AmComplt,
 24 ¶ 16.2.) This will not pass muster. First, Plaintiff has cited no facts to rebut the assertion by

1 NWTS and RCO that they are not in the business of reporting credit information to credit
2 agencies, and thus do not fall within the ambit of the FCRA. Second, even if One West Bank
3 may in the course of its duties provide financial information to credit agencies, a cause of action
4 which does not inform the institution of when and to whom it is alleged to have provided false
5 information is fatally deficient. It is entirely unacceptable to say that such allegations will be
6 “verified and proven through discovery.”

7 Further, as Defendants point out, Plaintiff has completely failed to plead the necessary
8 elements of the offense (including any allegation that he disputed the allegedly false information,
9 that the credit agency reported the dispute to Defendant or that Defendant failed to correct the
10 inaccuracy; 15 U.S.C. § 1681). Having given Plaintiff an opportunity to satisfactorily amend his
11 pleadings (and told him how to do so), the Court finds that further amendment would be futile
12 and dismisses this cause of action with prejudice.

13 Quiet title

14 In the previous Order on Motions to Dismiss, this claim was dismissed with prejudice as
15 to Defendants NWTS and RCO, as they appear nowhere on the title to the property and Plaintiff
16 did not assert that they had a title interest. The claim was allowed to survive against the
17 remaining Defendants solely because Plaintiff Global Trust #2 (which the original complaint
18 alleged to be the recorded title holder of the property; Complaint, ¶ 277) had not yet properly
19 appeared, and due process demanded that it be given an opportunity to appear and defend its
20 claim.

21 As noted above, Global Trust #2 has failed to appear and has been dismissed from this
22 lawsuit. However, in his Amended Complaint, Plaintiff now represents that he is the title holder
23 and attempts to prosecute his claim on that basis. (AmComplt, ¶ 11.8.) Plaintiff is judicially
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1 estopped, having claimed (and presented evidence) that Global Trust #2 was the title holder,
 2 from modifying his position to address a legal deficiency in his case. New Hampshire v. Maine,
 3 532 U.S. 742, 749-50 (2001). The Court rejects that allegation and, finding that a claim upon
 4 which relief may be granted has not been stated, dismisses this quiet title cause of action with
 5 prejudice.

6 7 New claims

8 Before embarking on a claim-by-claim analysis of the new causes of action appearing in
 9 Plaintiff's Amended Complaint, the Court will address Plaintiff's most persistent defense to
 10 Defendants' attack upon the sufficiency of his pleadings. As in the previous motions to dismiss,
 11 Defendants challenge nearly all of Plaintiff's claims on timeliness grounds. The operative dates
 12 for the statute of limitations analysis are:

- 13 • December 28, 2007: Plaintiff executed Deed of Trust
- 14 • December 2008: Plaintiff ceased making payments on the loan
- 15 • March 13, 2009: NWTS mailed a notice of default to Plaintiff (which he acknowledged
 16 receiving; Complaint, ¶ 248)
- 17 • April 24, 2009: NWTS mailed a Notice of Trustee's Sale to Plaintiff
- 18 • October 2, 2009: Trustee's sale held (without objection from Plaintiff)
- 19 • August 1, 2013: Plaintiff filed the instant lawsuit

20 Nearly every claim that Plaintiff has filed is vulnerable to attack on the basis of
 21 timeliness. Plaintiff attempts to evade the effects of the statute of limitations with a number of
 22 legal theories, none of which have any legal support or logical integrity. He argues first that,
 23 because the foreclosure sale was allegedly conducted without statutory authority, it "never
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1 happened” and therefore the statute of limitations does not apply. (Dkt. No. 82, p. 9; Dkt. No.
2 83, p. 13). He cites to no case law which has ever adopted this position and indeed it has no
3 logical or intuitive appeal. Were Plaintiff permitted to prevail on this argument, he could
4 arguably bring his claim to invalidate an allegedly illegal foreclosure ten, twenty, fifty years
5 from the date of the trustee’s sale. This kind of uncertainty is exactly what statutes of limitations
6 were created to avoid.

7 Statutes of limitations are intended to promote justice by preventing surprises through the
8 revival of claims that have been allowed to slumber until evidence has been lost,
memories have faded, and witnesses have disappeared.

9 Gabelli v. SEC, ___ U.S. ___, 133 S.Ct. 1216, 1221 (2013). The Court rejects Plaintiff’s theory
10 and will enforce the statute of limitations where applicable.

11 It also appears that Plaintiff is making some argument that the statute of limitations
12 should be tolled in this case, based on his allegation that the “true parties in interest have been
13 hidden from the Plaintiff.” (Dkt. No. 82, p. 24-25.) The Court rejects this argument as well: as
14 early as October 2008, Plaintiff sent a letter to Defendant IndyMac Federal Bank (“IMFB”)
15 disputing the validity of their financial relationship and claiming that he had sent a \$320,000
16 promissory note as full payment on his loan. As this Court pointed out in the previous Order on
17 Motions to Dismiss:

18 As early as 2008, he sent letters to IndyMac Federal raising issues about the origination
19 and transfer of his loan. (Complaint, Exs. 5, 12, 13.) In his response brief, Plaintiff lays
20 out in detail his efforts to dispute his debts, the legitimacy of his loan and the foreclosure
process prior to the sale in March 2009. Dkt. No. 53, pp. 13-15.

21 Dkt. No. 65, p. 19. Plaintiff is not entitled to any relief from the operation of the statutes of
22 limitation. For the vast majority of his newly-plead causes of action, their untimeliness alone is
23 grounds for dismissal.
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1 “Constitutional claim”

2 In his Amended Complaint, Plaintiff attempts to attack the constitutionality of the Deed
3 of Trust Act. Initially, the Court notes that the claim is procedurally deficient: Plaintiff is
4 required by Washington statute to notify the State Attorney General of any constitutional
5 challenge to state legislation. (RCW 7.24.110.) There is no indication in the Amended
6 Complaint that such notification has occurred.

7 The claim fares no better on substantive grounds. The Deed of Trust Act has already
8 been found by the Washington State Supreme Court to satisfy constitutional due process
9 requirements. Morrell v. Arctic Trading Co., 21 Wn.App. 302, 304 (1978); *see also* Kennebec,
10 Inc. v. Bank of the West, 88 Wn.2d 718, 726 (1977). Plaintiff is also mistaken that Washington
11 superior courts are supposed to enjoy exclusive original jurisdiction over cases involving real
12 property – under the proper circumstances, federal courts may (and do) exercise jurisdiction over
13 questions involving title or possession of real property.

14 Plaintiff’s constitutional challenge fails both procedurally and substantively; it will be
15 dismissed with prejudice.

16 Fraud

17 This claim fails under the first of many timeliness challenges to Plaintiff’s amended
18 claims. The statute of limitations for fraud in Washington is three years. (RCW 4.16.080(4).)
19 As noted above, Plaintiff had been corresponding with Defendants from late 2008 into early
20 2009 concerning the alleged deficiencies in the mortgage process. The documents he cites in his
21 pleadings as evidence of the fraud perpetrated against him are the Notice of Default, the
22 Assignment of the Deed of Trust, the Notice of the Foreclosure Sale, the Postponement of the
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1 Foreclosure Sale and the Trustee's Deed (Dkt. No. 82, p. 15)— all documents which he was
2 aware of (and complaining about) in 2008 and 2009.

3 Again, Plaintiff appears to advocate for some form of tolling with his allegation that
4 “[t]he issue of common law fraud did not because [*sic*] apparent to Plaintiff until he review [*sic*]
5 the recent Appellant [*sic*] and Supreme Court cases...” (*Id.*) This claim is belied by the series of
6 letters he wrote in 2008 and 2009 complaining about the process to which he was being
7 subjected. Much like his attempt to transfer title from Global Trust #2 to himself, he is judicially
8 estopped from denying that he was aware of and complaining about fraud and malfeasance on
9 Defendants’ part well over three years prior to the filing of his lawsuit. His fraud claim is
10 subject to dismissal with prejudice on the grounds that it was not timely filed.

11 Even were that not the case, Plaintiff’s amended pleadings fail to meet the FRCP 9(b)
12 requirement that fraud must be plead with particularity. His allegations are completely lacking
13 in details of time, place and responsible party and the Court will not sustain such vague and
14 ambiguous claims of fraudulent conduct over Defendants’ objections. The fraud claim will be
15 dismissed with prejudice.

16 Negligent undertaking

17 Under Washington law, the maximum statutory limitations period for this claim (which
18 Plaintiff bases on the Restatement (Second) of Torts’ recognition of a duty from “[o]ne who
19 undertakes... to render service to another which he should recognize as necessary for the
20 protection of the other’s person or things;” AmComplt, ¶ 12.6) is three years. Based on
21 Plaintiff’s awareness of what he considered to be the deficiencies in Defendants’ performance in
22 2008 and 2009, he cannot escape the operation of the statute of limitations and there is no
23 amendment possible which would cure this defect.

1 In addition Defendants NWTs and RCO were not entities who undertook to render
2 services to Plaintiff. Plaintiff attempts to “impute” liability to them under some variation of the
3 “Good Samaritan Doctrine” (*see* AmComplt, ¶ 12.10), but provides no legal authority which
4 supports this theory. The negligent undertaking cause of action will be dismissed with prejudice.

5 *Intentional infliction of emotional distress*

6 The elements of this cause of action require (1) extreme and outrageous conduct
7 (“beyond all bounds of decency;” Robel v. Roundup Corp., 148 Wn.2d 35, 51 (2002) which (2)
8 inflicts emotional distress and (3) causes actual harm to Plaintiff as a result. It has already been
9 found in this district that an improper foreclosure proceeding does not rise to the level of
10 “outrageous conduct” required for liability under this tort. Klinger v. Wells Fargo Bank, 2010
11 WL 5138478, *8 (WD Wa., 2013). Plaintiff alleges no behavior “so outrageous in character, and
12 so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as
13 atrocious, and utterly intolerable in a civilized community.” Robel, at p. 51.

14 Furthermore, with a foreclosure sale which was announced in July 2009 and occurred in
15 October 2009, Plaintiff’s claim runs afoul of the 3-year statute of limitations. Cox v. Oasis Phys.
16 Therapy, 153k Wn.App. 176, 193 (Div. 3, 2009). This cause of action will be dismissed with
17 prejudice.

18 *Unjust enrichment*

19 Whatever benefit may have accrued to any of Defendants as a result of the events of
20 which Plaintiff complains was conferred no later than October 2009 when the foreclosure sale
21 occurred. With a 3-year statute of limitations (*see* SPEEA v. Boeing Co., 139 Wn.2d 824, 837-
22 38 (2000)), it would be futile for Plaintiff to amend this claim further and the Court will dismiss
23 it with prejudice.

1 Breach of fiduciary duty

2 Plaintiff has provided no case or statutory authority for his theory that any of the
3 Defendants owed a special fiduciary duty to him. In fact, the provisions of the Deed of Trust Act
4 are exactly to the contrary: the “trustee or successor shall have no fiduciary duty or fiduciary
5 obligation to grantor...” (RCW 61.24.010(3).)

6 And, again, any breach he could allege falls outside of the 3-year statute of limitations.
7 (See Bertelsen v. Harris, 459 F.Supp.2d 1055; affirmed, 537 F.3d 1047 (ED Wa. 2006).) This
8 cause of action will be dismissed with prejudice.

9 Negligence per se

10 In 2009, the Washington legislature abolished negligence per se for any cases filed after
11 August 1, 1986. (See Hansen v. Friend, 118 Wn.2d 476, 483 (1992).) Plaintiff merely responds
12 to Defendants’ challenge by arguing that, “if the foreclosure was conducted negligently,” the
13 borrower is entitled to damages. (Dkt. No. 85, ¶ 1.20.) But no facts are alleged as to breach of a
14 duty of ordinary care, and no authority produced in support of a theory that an allegedly unlawful
15 foreclosure sale is a per se negligent act.

16 In fact, it appears that Plaintiff is basing his claim of negligence per se on an alleged
17 violation of RCW 19.86.020, the Washington Consumer Protection Act (“CPA”). The Court has
18 already ruled that Plaintiff is outside the statutory period for filing CPA claims (see Dkt. No. 65,
19 pp. 6-7) and this claim is subject to the same analysis and the same result. The negligence per se
20 cause of action will be dismissed with prejudice.

21 Claim for payment/discharge of debt

22 The basis for this claim is Plaintiff’s contention that the FDIC paid his debt, entitling him
23 to a full discharge of his obligation. (AmComplt, ¶¶ 20.2, 20.13-20.14.) He relies on RCW
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62A.3.602 as the statutory authority for his claim, but under that statute, a negotiable instrument is only paid if “payment is made by or on behalf of a party obligated to pay the instrument.” (*Id.*, ¶ 20.6.) But there is no allegation either that (1) the FDIC was obligated to pay the loan contract debt or (2) that it did so on Plaintiff’s behalf. Plaintiff asserts no basis upon which the Court can conclude that the FDIC’s actions released him from his obligation to pay under the contract.

Plaintiff provides no response to Defendants’ arguments in this regard and the Court will conclude that his non-response is a concession to the merits of Defendants’ position. This claim will be dismissed with prejudice.

Abuse of process

Plaintiff argues that “[a]buse of process exists because Defendants failed to adhere to the DTA statutes by acting as a trustee without authority.” (Dkt. No. 82, p. 15.) But this Court has already ruled that, by action of the statute of limitation, Plaintiff has no access to any claimed violations of the Deed of Trust Act. (Dkt. No. 65, p. 10.) Plaintiff is thus judicially estopped from establishing any other causes of action based on claimed DTA violations.

Even if that were not the case, the 3-year statute of limitations on any abuse of process claim has run as well. (RCW 4.16.080(2).) This cause of action will be dismissed with prejudice.

Conclusion

On either substantive or timeliness grounds (or both), none of Plaintiff’s asserted causes of action under his amended complaint have survived Defendants’ motions to dismiss. The Court DISMISSES Plaintiff’s lawsuit and, finding that further amendment of his complaint would be futile, dismisses the lawsuit with prejudice.

1 The clerk is ordered to provide copies of this order to all counsel.

2 Dated July 9, 2014.

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5 Marsha J. Pechman
6 Chief United States District Judge
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